



2026:DHC:2057



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Reserved on: 27th November, 2025*
Pronounced on: 10th March, 2026

+ **CRL.M.C. 494/2018**

RITU BUTALIA

.....Petitioner

Through: Mr.H.S.Bhullar, Advocate with
Mr. Fateh Singh Bhullar, Advocate

versus

STATE & ANR

.....Respondents

Through: Mr. Shoaib Haider, APP for the State.
Mr. Zoheb Hossain, Special Counsel
for Income Tax with Mr. Debesh
Panda, Counsel for Income Tax, Mr.
Induraj, JSC, Mr. Sanjeev Menon,
JSC, Mr. Vivek Gurnani, Adv. , Mr.
Kartik Sabharwal, Adv., Mr. Satyam,
Adv.

+ **CRL.M.C. 506/2018**

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Through: Mr.H.S.Bhullar, Advocate with
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Mr.Kartik Sabharwal, Adv., Mr.
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CRL.M.C. 507/2018

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CRL.M.C. 509/2018



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JSC, Mr. Vivek Gurnani, Adv.,
Mr.Kartik Sabharwal, Adv., Mr.
Satyam, Adv.

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CRL.M.C. 510/2018

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Mr.Kartik Sabharwal, Adv., Mr.
Satyam, Adv.

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CRL.M.C. 505/2018

RITU BUTALIA



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JSC, Mr. Vivek Gurnani, Adv.,
Mr.Kartik Sabharwal, Adv., Mr.
Satyam, Adv.

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CRL.M.C. 511/2018

RITU BUTALIA

.....Petitioner

Through: Mr.H.S.Bhullar, Advocate with
Mr. Fateh Singh Bhullar, Advocate

versus

STATE & ANR

.....Respondents

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Satyam, Adv.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA



J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The aforesaid eight Petitions under Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*), filed by Petitioner, Smt. Ritu Butalia, challenging the common impugned Order dated 20.12.2017 of the Ld. Additional Chief Metropolitan Magistrate (ACMM) (Central), Delhi, whereby the Application for production of Original Documents in the Complaint Cases filed by the Respondent No.2, Income Tax Department under Section 276C (1), 277 of the Income Tax Act, 1961 and Section 191 of the Indian Penal Code, 1860 (*hereinafter referred to as "IPC"*), has been dismissed and a cost of Rs. 5,000/- was also imposed.
2. ***Briefly stated***, on 25/26.02.2016, a search and seizure operation was conducted at the residence of the Petitioner by the Income Tax Investigation Team. During this search, the Petitioner's statement was recorded under Section 132(4) of the Income Tax Act, 1961.
3. Subsequently, on 16.03.2016, sanction under Section 279(1) of the Income Tax Act was accorded by the Principal Director of Income Tax (Inv)-I, Delhi, for launching prosecution against the Petitioner. Consequently, eight Complaints were filed on 21.03.2016, by the Respondent No. 2, Income Tax Department alleging offences under Sections 276C(1) and 277 of the Income Tax Act, 1961, and Section 191 IPC. The allegations pertain to undisclosed foreign assets, specifically interests in



British Virgin Islands (BVI) entities (M/s Choice Gate Incorporated and M/s Arington Holdings Ltd) and a Bank Account with UBS AG, Singapore.

4. The Ld. ACMM took cognizance of the Complaints vide Order dated 30.03.2016 and summoned the Petitioner.

5. During the *pre-charge evidence stage*, the Complainant CW-1, Sh. Amit Kumar in his examination-in-chief, on 02.05.2017, exhibited various documents, including foreign documents, purportedly received from BVI and Singapore Authorities, as Ex. CW-1/6 and Ex. CW-1/10 respectively. The Court noted “OSR” (Original Seen and Returned) against these exhibits.

6. The Petitioner contends that upon inspecting the photocopies of the exhibited documents, it was observed that the foreign documents lacked the necessary authentication or attestation by the Indian High Commission, in the respective countries. Consequently, on **26.09.2017**, the Petitioner filed an Application before the Trial Court seeking the production of all original relied-upon documents and inspection thereof, to effectively cross-examine the witness.

7. The **Respondent No. 2** did not file a written reply but **opposed the Application**.

8. *The Ld. Trial Court dismissed the Application vide the impugned Order dated 20.12.2017, by observing that the relevancy and admissibility of a document are two separate factors. A document may be relevant but whether it is admissible is a question which is to be determined at an appropriate stage. It was also observed that the Application prima facie appeared to be an attempt to delay the trial and imposed a cost of Rs. 5,000/-.*



9. Aggrieved, the Petitioner has challenged the impugned Order on the **ground** that the Ld. Trial Court has failed to appreciate the mandatory provisions of Section 78(6) of the Indian Evidence Act, 1872, which mandates that *public documents of any other class in a foreign country, must be proved by the original or a certified copy which bears a Certificate under the seal of a Notary Public or an Indian diplomatic Agent/officer.*

10. Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948, empowers diplomatic officers to administer oaths and perform notarial acts. The absence of such diplomatic authentication on the foreign documents Ex. CW-1/6 and CW-1/10, makes them inadmissible.

11. Moreover, effective cross-examination of the Complainant/CW-1 is impossible, without the production of authentic and reliable documents. Reliance on unauthenticated documents, causes grave prejudice to the Petitioner's defense.

12. The Petitioner further asserts that the Ld. Trial Court erred in dismissing the Application by observing it as a "*delay tactic*" without considering the statutory requirements for proving foreign documents. The Petitioner had already deposited the cost to avoid contempt, but challenges the merit of the dismissal.

13. The **Respondent contends that the documents** in question were received from the Competent Authorities of British Virgin Islands and Singapore, under the "Exchange of Information" Article of the Tax Information Exchange Agreement (TIEA) and the Double Taxation Avoidance Agreement (DTAA), respectively. These were routed through the Foreign Tax & Tax Research (FT&TR) Division of the Ministry of Finance,



Government of India. The information is official and obtained through government-to-government channels, thereby establishing its authenticity.

14. The Respondent asserted that the Application filed by the Petitioner at the stage of cross-examination was merely a ploy to delay the trial proceedings.

Submissions heard and record perused.

15. The precise grievance of the Petitioner is the denial of an opportunity to inspect the *original* foreign documents, which she claims are inadmissible for want of diplomatic Certification, at the stage of cross-examination of CW-1.

16. The procedure for proving public documents of a foreign country, is provided in *Section 78(6)* of the Indian Evidence Act, 1872 which states that such documents be proved, by the original or a certified copy. If a copy is provided, it must be accompanied by a Certificate under the seal of a Notary Public or a Diplomatic Agent of India, verifying that the copy is duly certified by the officer having legal custody of the original Document.

17. Similarly, *Section 3 of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1948* provides legal recognition to notarial acts performed by Indian diplomatic officers, abroad.

18. In the present case, the documents Ex. CW-1/6 and Ex. CW-1/10, were not obtained by a private individual, but were received by the Income Tax Department, Government of India, from the competent authorities of BVI and Singapore under International Treaties i.e. TIEA and DTAA. The documents were transmitted through the Joint Secretary (FT&TR), who is the Competent Authority in India.



19. While the mode of transmission is official, mere fact that a document is received *via* official channels does not automatically exempt it from the requirements of proof, though it carries a strong presumption of genuineness. To be admissible in evidence, the Documents still need to be proved in accordance with Section 78 Indian Evidence Act.

20. The Trial Court records indicate that during the examination-in-chief of CW-1 on 02.05.2017, the originals were “*Seen and Returned*” (OSR). This implies the originals were produced at the time when they were exhibited. Apparently, no objection to the exhibiting of the Documents was raised by the petitioner, at that stage. If the originals were OSR, the copies on record are deemed to be true copies of those originals. If the originals lacked the seal, the copies would reflect the lack thereof.

21. However, the right of the accused to fair trial, includes the right to effective cross-examination. If the defense rests on challenging the admissibility of the documents based on statutory non-compliance with Section 78(6) IEA, the accused must be afforded an opportunity to demonstrate that the originals indeed, lacked the required Seal/Certification.

22. Infact, these documents were produced at the stage of examination-in chief; no prejudice would be caused to the respondent in producing the original documents at the stage of cross-examination, for inspection as it would only ensure that the petitioner does not suffer any prejudice in effective cross-examination, merely on procedural technicalities. The fundamental rule of Evidence that mere marking a document as an Exhibit or Mark, which is only for the purpose of identification of the Document, still needs to be proved according to the rules of Evidence.



23. Denying inspection of documents, particularly foreign documents where authenticity is paramount that are the foundation of the Prosecution's case, would prejudice the defense.

24. The Ld. Trial Court dismissed the Application primarily on the ground that it was "*aimed at delaying the trial*". While courts must be vigilant against dilatory tactics, procedural rights regarding evidence cannot be swept aside solely on the ground of delay, especially when the delay is not egregious. The request was for the production/inspection of documents already relied upon and ostensibly possessed by the Department, which cannot be held as unjustified or solely intended to delay the Trial.

25. Therefore, to ensure that the Petitioner has full opportunity to cross-examine the witness on the status of the originals, the Petitioner is entitled to seek production of the originals of documents Ex. CW-1/6 and Ex. CW-1/10 during the cross-examination of CW-1, for the purpose of confrontation/inspection by the Petitioner.

Conclusion:

26. In view of the above analysis, the impugned Order dated **20.12.2017** is modified to the extent that the Respondent No. 2 is directed to produce the original documents corresponding to **Ex. CW-1/6** and **Ex. CW-1/10** (and any other foreign documents relied upon), during the next scheduled hearing for the cross-examination of CW-1.

27. The Petitioner shall be permitted to inspect these original documents in the presence of the Ld. Magistrate, to verify the existence or absence of the diplomatic authentication/attestation. The cross-examination shall proceed immediately thereafter, and no adjournment shall be granted to the Petitioner on this ground.



2026:DHC:2057



28. The cost of Rs. 5,000/- imposed by the Ld. Trial Court is set aside, and the Petitioner is directed to cooperate in the expeditious conclusion of the trial.
29. The Petitions are **allowed** and disposed of, in the above terms.
30. Pending Application(s), if any, also stand disposed of.

(NEENA BANSAL KRISHNA)
JUDGE

MARCH 10, 2026/N